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Law Department

Notification

The 26th July 2016

No. B/Estt(HC)-06-37/08-4545/J—In exercise of the powers under Part-X of the code of Civil Procedure, 1908(5 of 1908) and Section 89 of the Code, The Hon'ble Patna High Court is pleased to make Bihar Civil Procedure (Mediation) (Amendment) Rules, 2016, the draft of which is here by published for information of general public and inviting objections, if any.

Objections, if any, may be filed before the Secretary, Law Department, Government of Bihar, Old Secretariat, Patna-15, within 15 days of its publication in the official gazette. After disposal of the objection, if any, final publication of Bihar Civil Procedure (Mediation) (Amendment) Rules, 2016, may be made.

Draft of Bihar Civil Procedure (Mediation) (Amendment) Rules, 2016, is hereby annexed.

By order of the Governor of Bihar,
SANJAY KUMAR,
Secretary to the Government.

PROPOSED AMENDMENTS IN BIHAR CIVIL PROCEDURE (MEDIATION) RULES, 2008

1. Title and Commencement.— (i) These Rules shall be called the Bihar Civil Procedure (Mediation)(Amendment) Rules, 2016.

(ii) They shall come into force from the date of publication in the Official Gazette.

2. The following sub-rule (iii) shall be added after sub rule (ii) of rule 1 of the said Rule 2008:-

“(iii) These Rules shall apply to all mediations connected with any judicial proceeding or other proceedings pending in the Patna High Court or in any court subordinate thereto. The mediation in respect of any judicial proceeding or other proceedings pending before the Patna High Court or in any other court subordinate thereto may be referred to the Patna High Court Mediation Centre or the District Court Mediation Centres set up by the Bihar State Legal Service Authorities. Upon such reference being made to the Patna High Court Mediation Centre or the District Court Mediation Centres, the same shall be governed by the present Rule”

3. Rule 2 of the said Rules, 2008 will be substituted by the following:-

“ 2 COMPOSITION OF MEDIATION CENTRE.-

(1). Composition of the Patna High court Mediation Centre will be as follows:

(i) **Patron.**- Hon'ble the Chief Justice of the Patna High Court.

(ii) **Supervisory Committee.**- Headed by an Hon'ble Judge of the Court as Chairman and the following categories of persons to supervise the functioning of the Centre. The Chairman and Members (other than ex-officio) shall be nominated by Hon'ble the Chief Justice of Patna High Court. The Hon'ble the Chief Justice may change the composition of the Supervisory Committee from time to time:-

1. An Hon'ble Sitting Judge of the Patna High Court as the Chairman
2. Advocate General or his nominee out of Government counsels
3. Advocates / Presidents of the 3 Associations of the Court-3
4. Trained Mediators having longest/largest experience of Mediation in the Centre-2
5. The Registrar General of the Patna High Court as the Secretary
6. Co-ordinator of the Centre as Joint Secretary

(iii) **Governing Committee.**- Comprising of the Co-ordinator of the Centre, 2 Trained Mediator Members of Supervisory Committee and 5 trained Mediators with experience of Mediation in the Centre to organize the day to day functioning of the centre including allocation of work among the Mediators. These 5 shall be nominated by the Hon'ble Chairman of the Supervisory Committee who shall also nominate out of the 7 trained Mediators 1 as the Secretary and 2 others as Joint Secretaries to the Committee. The Hon'ble Chairman of the Supervisory Committee may change the 5 Mediator members nominated for this Committee and also nominate new office bearers from time to time.

(iv) **Co-ordinator of the Centre.**- He shall be a Judicial Officer not below the rank of ADJ deputed by the Court/Hon'ble the Chief Justice to be executive head of the Centre responsible for its proper working. He shall manage the administrative and financial matters and also correspond on behalf of the Centre. He will manage day to day working with the help of Governing Committee and shall also implement the decisions of the High Court Mediation Committee as well as the Supervisory Committee of the Centre, as approved by the Patron, Hon'ble the Chief Justice.

(v) **Functions of the Centre.**- The following, among others, shall be the functions of the Centre:-

1. To receive cases referred for Mediation by the Courts.
2. To allocate cases to suitable trained Mediators.
3. To certify trained Mediators and empanel them in the Centre.
4. To send reports and other necessary communications to the referral Court.
5. To create public awareness about the process of mediation.
6. To hold workshops and seminars for the Bar and Bench to promote mediation as an appropriate method of dispute resolution.

(2) Composition of the District Court Mediation Centre will be as follows.-

(i) **Patron.**—District Judge of the District.

(ii) **Supervisory Committee.**— Headed by the Principal Judge Family Court as Chairman and the following categories of persons to supervise the functioning of the Centre. The Members (other than ex-officio) shall be nominated by the District Judge. The District Judge may change the composition of the Supervisory Committee from time to time:-

1. Principal Judge Family Court as the Chairman.
2. Public Prosecutor.
3. Government Pleader.
4. From amongst President and Secretary of the District Bar Association(s) to be nominated by the District Judge-2
5. Trained Mediators having longest/largest experience of Mediation in the Centre-2.
6. Co-ordinator of the Centre as Secretary.
7. The Registrar/Judge Incharge of the Civil Court as the Joint Secretary.

(iii) **Governing Committee.**— Comprising of the Co-ordinator of the Centre, 2 Trained Mediator Members of Supervisory Committee and 3 other trained Mediators with experience of Mediation in the Centre to organize the day to day functioning of the Centre including allocation of work among the Mediators. These 3 shall be nominated by the District Judge who shall also nominate out of the 5 trained Mediators 1 as the Secretary and 2 others as Joint Secretaries to the Committee. The District Judge may change the 3 Mediator members nominated for this Committee and also nominate new office bearers from time to time.

(iv) **Co-ordinator of the Centre.**- He shall be a Judicial Officer not below the rank of Additional District Judge deputed by the Court. He shall be the executive head of the Centre responsible for its proper working. He shall manage the administrative and financial matters and also correspond on behalf of the Centre. He will manage day to day working with the help of Governing Committee and shall also implement the decisions of the Patna High Court Mediation Committee as well as the Supervisory Committee of the Centre, as approved by the Patron, the District Judge.

(v) **Functions of the Centre.**- The following among others shall be the functions of the Centre:-

1. To receive cases referred for Mediation by the Courts.
2. To allocate cases to suitable trained Mediators.
3. To certify trained Mediators and empanel them in the Centre.
4. To send reports and other necessary communications to the referral Court.
5. To create public awareness about the process of mediation.
6. To hold workshops and seminars for the Bar and Bench to promote mediation as an appropriate method of dispute resolution.

(3) **Appointment of Mediators.**— The Co-ordinator at the Patna High Court Mediation Centre and the Co-ordinator at the District Mediation Centre upon reference to mediation being received shall allocate the cases to a suitable Mediator who will fix a date and time for the first session for mediation and, accordingly, notify all the parties and/or their counsels of the date so fixed.

Provided that where all the parties desire the mediation to be conducted by an agreed Mediator, not empanelled in the list of Mediators, then the Co-ordinator shall allocate or re-allocate, as the case may be, to such Mediator accordingly, subject to the condition that such Mediator shall not be suffering from the disqualifications referred to in Rule-5."

4. A new Sub-rule (e) shall be added after Sub-rule (d) of Rule-3 of the said Rules:-

"The Mediators so appointed would be for a period of 3 years from the date of appointment and there shall be a periodical review of their performance.

Their tenure can further be extended for a period of three (3) years at a time subject to the discretion of the High Court Mediation Committee."

5. Rule 12 of the the said Rules, 2008 is hereby deleted.

6. The words "sixty days" used in Rule 18 of the said Rules,2008 shall be substituted by the words "ninty days".

7. Rule 26 of the Rules, 2008 shall be substituted by the following:-

26. Fee of mediator and costs.—(i) Fee of the Mediators and other Sundry expenses of the mediation centre shall be borne by the State Government and funds shall be provided by the State under a distinct head.

(ii) Fee of the Mediators shall be as follows:-

- (a) Rs. 3000/- per Mediation in the High Court in which the Mediation succeeds and Rs. 1500/- per Mediation in the High Court in which the Mediation fails even after putting 2-3 sittings by the Mediator accompanied by the report/certificate of the Co-ordinator to the effect that despite every possible effort the mediation has failed.
- (b) Rs. 1500/- per Mediation in the civil courts in which the Mediation succeeds and Rs. 750/- per Mediation in the civil courts in which the Mediation fails even after putting 2-3 sittings by the Mediator accompanied by the report/certificate of the Co-ordinator to the effect that despite every possible effort the mediation has failed."

8. The following new Rule- 29 shall be added after Rule-28 of the said Rules, 2008:-

29. Residuary Powers.—"Patna High Court Mediation Committee shall be competent to issue necessary directions in respect of smooth functioning and conduct of the mediation throughout the State in the shape of Scheme or otherwise and further be competent to revise/modify the same including fee payable to the Mediator as fixed under Rule 26 above."

"Provided that the Mediation Committee shall not revise/modify the fee in excess of 10% of the prevailing fee at any one time and shall not do it more than once in a calendar year and, in case, it is decided to revise the fees upward by more than the said limit of 10% at one time then the same shall be done with the consent of the State Government."

SANJAY KUMAR,
Secretary to the Government.

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